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ABSTRACT

The questions that observers of Congress have posed throughout U.S. history continue to confront citizens: how have the constitutional powers of Congress adapted to new conditions, and how has this affected Congress's relations with the other branches of government. Congress, in its constitutional design, is part of the remedy for the problems of republican forms of government that have plagued previous legislative bodies. Since 1789 constitutional debate has concerned the structure and powers of the branches themselves less than the exercise of particular powers. Some, both in and out of Congress, believe the "advice and consent" clause of Article II implies a prominent role for Congress in formulating and conducting the nation's foreign policy. Some constitutional reformers are concerned with the so-called congressional "gridlock." Reform proposals designed to overcome deadlocks between Congress and the president would restructure the government in a form resembling parliamentary democracy. It must be realized that debate on the Constitution is inevitable in a democracy, and that powers granted by the Constitution were designed to be adapted to changing circumstances. A list of 13 references is included. (PPB)

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The Legislative Branch and the Constitutional Order



Commission on the Bicentennial
of the United States Constitution
808 Seventeenth Street, N.W.
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INTRODUCTION

"If the blessings of our political and social condition have not been too highly estimated, we cannot well overrate the responsibility and duty which they impose upon us. We hold these institutions of government, religion, and learning to be transmitted, as well as enjoyed. We are in the line of conveyance, through which whatever has been obtained by the spirit and efforts of our ancestors is to be communicated to our children."

Daniel Webster

From a speech delivered at Plymouth

December 22, 1820

Two hundred years ago, the American people became the first to establish government by acts of popular consent. That consent was the product of an extraordinary national dialogue on the elementary principles of the government being established, led by men who had experience in local and state affairs. From the fall of 1787 through the summer of 1788, Americans debated the merits of the new constitution framed in Philadelphia. On both sides, opinions were stated, challenged, and defended. And once the decision was made, something remarkable happened: the losing side, the Antifederalists, who had claimed that the new government would destroy their freedom and rights, joined their opponents in making the government work.

Today, we still have a government that thrives on argument, dispute, and debate. But is it still working? In 1789, the responsibilities of the new federal government could be managed by a part-time Congress and a small executive branch. The minuscule federal judiciary of just 19 judges, created in 1790, carried a case-load so light that some justices thought it scarcely worth their time. Today, the federal government's work-load is vast; in fact, the government payroll today exceeds the population of the United States in 1789. How have our institutions of government, designed in the eighteenth century, adapted to the requirements of the nineteenth and twentieth? How will they respond to those of the twenty-first? If the adoption of the Constitution was worthy of a solemn national debate, its adaptation to conditions, past, present, and future, seems equally deserving.

To facilitate this discussion, the Commission on the Bicentennial of the United States Constitution sponsors the College-Community Bicentennial Forums. Public awareness of the Constitution and its continuing importance can best be fostered by linking the political issues of the moment to its underlying principles and historical development. The idea of constitutional government is in America the foundation of all attempts to resolve questions of public policy. Today as in 1787 it provides the frame for all of our ideas about politics. Yet the Constitution is often left out of current discussions of politics -- its influence, though profound, is unconscious. The College-Community Forums are designed to provide an avenue for public reflection about our institutions of government and promote a deeper and more widely shared understanding of the Constitution among the general public. It is the Commission's hope that through these Forums, not only the institutions of government, but also the inquiring, experimental spirit of the Founding generation, can be enhanced for generations to come.

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THE LEGISLATIVE BRANCH AND THE CONSTITUTIONAL ORDER

The freedom to discuss the functioning of a government and openly judge its effectiveness is the hallmark of a government run "by the people." For more than two centuries, political debate in America has focused in varying degrees of vigor on the functioning of the Legislative Branch and on tensions among the branches. During the debates on the ratification of the Constitution, James Madison asserted that "a dependence on the people is, no doubt, the primary control on the government" (*Federalist 51*). While voters regularly give some indication of their view of Congress as they vote for their senators and representatives, their concerns are also manifested in the questions that arise in popular debates.

The questions that observers of Congress have posed throughout American history continue to confront citizens: how have the constitutional powers of Congress adapted to new conditions, and how has this affected Congress's relations with the other branches? These questions recur throughout a range of issues, from foreign affairs and oversight of the federal budget and the executive agencies to congressional staffing. Some commentators have even questioned whether Congress is truly representative, and whether the "gridlock" in Congress has not diminished its capacity to act for the common good.

Debate over the relation of the Legislative to the Executive Branch of government began even before the American colonies declared their independence from Great Britain. Many colonial critics called Parliament arbitrary and tyrannical in approving such legislation as the Stamp Act of 1765. In truth, this was about what many of the more radical colonists expected from a legislative body that, in their opinion, did not represent their interests and was corrupted by the Crown. Deeply committed to the principle of representative government -- which they had practiced in the colonies on local issues for a century and a half -- they were all the more incensed at Parliament's arrogance.

At home, colonial governors were less successful than the King, but still were often able to bribe or otherwise persuade legislatures to pass their legislation. When persuasion failed, colonial governors -- unlike the King -- did not hesitate to use their veto power. The King and his deputies, the colonial

governors, symbolized to the colonists the ability of the executive power to bend the legislative to its will. Once the Declaration of Independence was issued and states began to make their own constitutions, most states enacted systems in which the legislative branch was supreme.

Vested with a power that could not be challenged or checked by governors or judges, some of the state legislatures became arbitrary and unreliable. Frequent changes of membership led to frequent changes of policy, and the result was confusion. Inflationary paper money and *ex post facto* laws weakened public faith in representative institutions. Gordon Wood writes, "The people's will as expressed in their representative legislatures and so much trusted throughout the colonial period suddenly seemed capricious and arbitrary" (*The Creation of the American Republic, 1776-1787*, p. 405).

Poor governance under the Articles of Confederation* led the Philadelphia Convention to frame a new national government that balanced political power in a federal system yet was forceful enough to govern. In the new plan for American government encompassing a federal structure and separated powers, Madison said, "we behold a republican remedy for the diseases most incident to republican government" (*Federalist 10*).

Congress, in its constitutional design, is part of a remedy for the republican "diseases" that had plagued British and American legislative bodies in the past. The stable and more elite Senate would counterbalance the democratic tendencies of the House of Representatives. The House, with its two-year terms and frequent adjustment of apportionment, would be more responsive to public opinion than the Senate and far more democratic than the eighteenth century British House of Commons.

Opposed to the ratification of the Constitution, the Anti-Federalists feared a return to executive domination of the legislature. The two-year term for Representatives was too long, in their view, and the House districts too large: representatives would be too remote from the people and spend too much time in their "federal enclave." The Senate was even more frightening, for it shared in the critical executive powers of appointment and treaty-making. Their six-year terms would make Senators "very

*The Articles of Confederation were not ratified until 1781 but for most purposes they were operative during the Revolution.

apt to feel themselves independent and to form and pursue interests separate from those who appointed them," according to the Anti-Federalist writer "Brutus."

Constitutional debate since 1789 has concerned less the structure and powers of the branches themselves than the exercise of particular powers. Tensions between the branches are inherent and there remain large areas of power in which the constitutional boundaries are not clear. Decisions of the Supreme Court in constitutional cases often require interpretation of those perimeters. The ongoing dispute over war powers, for instance, pits Congress against the President: often the Constitution gives some support to each side. Words cannot always be as clear as weights and measurements, and controversy over congressional powers continues in debates over Congress's participation in the formulation of foreign policy, the calculation of the federal budget, and oversight of the actions of the Executive Branch.

Some, both in and out of Congress, believe the "advice and consent" clause of Article II implies a prominent role for Congress in formulating and conducting the nation's foreign policy. How large a role should Congress play in the determination of American foreign policy? How does the role of the Senate differ from that of the House? To what degree should Congress and the President share war powers? How does the War Powers Act affect the separation of powers? What if a president decides to ignore it?

Article I, Section 9 of the Constitution provides that Congress shall not draw money "from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time." How effectively is Congress carrying out this charge? Would a balanced budget amendment improve the nation's fiscal standing? Would a "line item" veto power solve or exacerbate the problems?

Several Congressional committees are charged with oversight of agencies of the Executive Branch, and some writers have observed that congressmen now spend much of their time helping constituents resolve problems with executive agencies and securing grants and contracts for local interests. How much independence should be granted to executive agencies in carrying out their duties? Is oversight of the bureaucracy an excessive burden for the legislative branch? Should Congress be allowed to

veto actions of executive agencies in order to assure proper execution of programs?

During the early years of the Republic, congressmen handled all aspects of legislative duties themselves. The modern Congress, on the other hand, has a complex system of committees and subcommittees with staffs of policy specialists. Why has Congressional staffing increased so dramatically? Is the new "congressional bureaucracy" necessary to carry out the Legislative Branch's duties? How does it compare with other democracies, Britain, for example?

Fundamental questions that faced the Constitutional Convention continue to be important concerns. The Framers sought to ensure representation of all people, not just particular classes or interest groups, in the national legislature. Some commentators today assert that the modern Congress is not really representative and that the interests of constituents are displaced by those of special interest groups. Is Congress overly influenced by political action committees and lobbyists? Do increasingly expensive House elections assure heightened influence for political action committees and give an unfair advantage to incumbents? Are election campaigns too long?

Some constitutional reformers are concerned with the so-called congressional "gridlock."⁷ Reform proposals designed to overcome deadlocks between Congress and the President would restructure the government in a form resembling parliamentary democracy. Is the difficulty of passing legislation necessarily a negative feature of American government? What reforms, if any, would make Congress more responsive to policy needs?

John Marshall, Chief Justice of the United States in the formative years of the Supreme Court, realized debate on the Constitution was inevitable in a democracy. In the seminal decision, *McCulloch v. Maryland*, Marshall reminded Americans that "it is a constitution we are expounding," and that powers granted by the Constitution were designed to be adapted to changing circumstances.

SELECTED BIBLIOGRAPHY

- Church, G.J. "Wars without Declarations: Congressional Struggles to Reclaim its Constitutional Authority," *Time*, July 6, 1987.
- Congressional Quarterly. *Budgeting for America: The Politics and Process of Federal Spending*. Washington, D.C.: Congressional Quarterly, Inc., 1982.
- Craig, Barbara Hinkson. *Chadha: The Story of an Epic Constitutional Struggle*. New York: Oxford University Press, 1988.
- Dodd, Lawrence C. and Bruce I. Oppenheimer. *Congress Reconsidered*. Third Edition. Washington, D.C.: Congressional Quarterly, Inc., 1982.
- Davidson, Roger H. and Walter J. Oleszek. *Congress and Its Members*. Second Edition. Washington, D.C.: Congressional Quarterly, Inc., 1985.
- Fenno, Richard F., Jr. *Home Style: House Members in Their Districts*. Boston: Little, Brown & Co., 1978.
- Hamilton, Alexander, James Madison and John Jay. *The Federalist Papers* (Note especially nos. 10 and 52-65). New York: New American Library, 1961.
- "How a Pentagon Critic will Wield his New Clout," *Business Week*. June 3, 1985. pp. 112ff.
- Morris, Richard B. *The Forging of the Union, 1781-1789*. New York: Harper & Row, 1987.
- Reid, T.R. *Congressional Odyssey: The Saga of a Senate Bill*. San Francisco: W.H. Freeman, 1980.
- Sundquist, James L. *The Decline and Resurgence of Congress*. Washington, D.C.: Brookings Institution, 1981.
- Wilson, Woodrow. *Congressional Government*. Baltimore: The Johns Hopkins University Press, 1981. (First edition, 1885.)
- Wood, Gordon. *The Creation of the American Republic, 1776-1787*. New York: Norton, 1972.